

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

ADAM TERCERO, SR.,

Defendant and Appellant.

B163294

(Los Angeles County  
Super. Ct. No. KA056557)

APPEAL from a judgment of the Superior Court of Los Angeles County.  
Philip S. Gutierrez, Judge. Affirmed.

Adam Tercero, Sr., in pro. per.; and Richard L. Fitzer, under appointment by the  
Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

An amended information charged appellant Adam Tercero, Sr. with possession of a controlled substance (count 1) and driving when the privilege has been suspended for a prior driving under the influence conviction (count 2). (Health & Saf. Code, § 11377, subd. (a); Veh. Code, § 14601.2, subd. (a).) The information further alleged he had served two separate felony prison terms and had two prior felony convictions within the meaning of the “Three Strikes” law. (Pen. Code, §§ 667.5, subd. (b); 667, subds. (b)-(i); 1170.12, subds. (a)-(d).)

The prosecutor made a plea offer of seven years, which appellant rejected. His counsel informed the court that after entering an open plea, appellant wanted a sentencing hearing to introduce evidence to mitigate his potential sentence. The court, defense counsel and the prosecutor admonished appellant at length as to all possible consequences of an open plea as well as the option of a jury trial. Appellant responded that he “wanted to plead guilty since day one” and was fully aware of “the risks” of entering an open plea. After waiving his constitutional rights, appellant entered an open guilty plea as to both counts and admitted the special allegations.

Defense counsel filed a motion to dismiss the prior felony convictions under Penal Code section 1385. The court struck one of the felony convictions and the two separate prison term enhancements and sentenced appellant as a second strike offender. The court imposed the upper term doubled for count 1, and a concurrent term of one year for count 2 or an aggregate term of six years.

Appellant filed a timely notice of appeal and requested a certificate of probable cause, alleging the plea was entered under duress and that counsel was ineffective for failing to investigate his case and for not presenting all of his documents to the court in support of his motion to dismiss his prior convictions. The court denied appellant’s request for a certificate of probable cause.

We appointed counsel to represent him on appeal.

After examination of the record, counsel filed an “Opening Brief” in which no issues were raised. On February 19, 2003, we advised appellant that he had 30 days

within which to personally submit any contentions or issues that he wished us to consider.

Appellant personally filed a hand printed response on March 17, 2003, in which he made claims he previously asserted in seeking a certificate of probable cause. Additionally appellant complains of “being prosecuted unfairly as a third-strike defendant” and contends he is entitled to have his plea set aside and be appointed new defense counsel.

We have examined the entire record. Appellant’s claims are not supported by the record. Contrary to his assertions, defense counsel did not provide appellant with constitutionally ineffective assistance of counsel and appellant was sentenced as a second strike offender for a term less than the negotiated plea offer.

We are satisfied that appellant’s attorney has fully complied with the responsibilities of counsel and that no arguable issues exist. (*Smith v. Robbins* (2000) 528 U.S. 259, 277-284; *People v. Wende* (1979) 25 Cal.3d 436, 441.)

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

WOODS, J.

We concur:

JOHNSON, Acting P. J.

MUNOZ (AURELIO), J.\*

---

\* Judge of the Los Angeles Superior Court assigned by the Chief Justice pursuant to article 6, section VI of the California Constitution.